

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR08-755

WILLIAM THOMAS HALE
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered JANUARY 7, 2009

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT,
[NO. CR2006-877-3]

HONORABLE GRISHAM A.
PHILLIPS, JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

William Thomas Hale was convicted in Saline County of internet stalking and sentenced to twenty-three years' imprisonment. He contends on appeal that the trial court erred in denying his motions for directed verdict based upon substantial evidence and jurisdictional arguments. We disagree and affirm.

By information filed December 27, 2006, Hale was accused of internet stalking, a violation of Arkansas Code Annotated section 5-27-306. At Hale's jury trial on January 8, 2008, Saline County Sheriff's Deputy Charles Barker testified that he used the computer in the sheriff's office and logged on to the Yahoo chat room as Amber Barker, a ninth-grade girl whose hobbies included "boys." Hale, logged on as DirBill_2000, initiated a chat with "Amber," telling her he was in Little Rock and that he was male and was thirty-three years old. Barker responded as Amber, and told Hale that she liked older guys, she was fourteen-years old, and she was from Alexander. Amber told Hale that she was skipping school that

day and that her mother was out of town. Amber asked Hale for a picture, and he sent her one of himself. Amber sent Hale a picture, which was actually a picture of Deputy Barker's thirty-two-year-old fiancé. The picture was a thumbnail that could not be expanded without distortion. Amber asked Hale if he was looking for a hook up, and Hale responded, "Maybe." When Hale asked Amber if she was looking for a hook up, she answered, "Sure." Amber asked Hale what he wanted to do, and Hale asked her how they would meet. Amber told him he could come to her house and gave him directions to Alexander. Hale gave Amber a telephone number and asked her to call him. Deputy Barker then asked a secretary at the sheriff's office, Kristy Ballard, to place the call.

Ballard testified that she is not a certified police officer. She said that she studied the chat log given to her by Deputy Barker before she placed the call to Hale. She testified that she took notes while talking to Hale but did not keep the notes. She said that Hale kept asking her what she wanted, and she asked him if he was talking about sexual things. He said yes, and she told him she would try to do anything at least once. He asked her if she liked sex toys, and she said she would like to try it. She told him she liked wine coolers and asked him if he was going to bring condoms. He said he would. Hale was arrested in the driveway of the house in Alexander, which was being watched by police. Ballard admitted that she made a mistake in the report when she stated that Hale initially called her.

Officer Robert Hammons testified that he arrested Hale after Hale drove up to the house in Alexander where police were waiting. Hammons found an adult novelty toy and four condoms in Hale's pocket. Officer Daniel Dodson testified that in Hale's truck was found a post-it note with the address in Alexander and the name Amber written on it, four

condoms in the console, Tag body spray, a bottle of Stud 100 Male Genital Desensitizer, and a box in the backseat containing a synthetic penis.

The State also called Detective Gary Robertson, who testified that he was the coordinator of the internet-sting operation on the day of Hale's arrest. Finally, the State introduced the recorded interview of Hale, which was played in open court. In that interview, Hale stated he was born on May 20, 1968.

At the conclusion of the State's case, Hale moved for a directed verdict arguing that the State failed to prove that he used a computer to solicit someone he thought was fifteen-years old or younger. He also argued that the State failed to prove that he was trying to arrange a meeting for sexual intercourse, activity, or conduct. He further argued that the State failed to prove that he was twenty-one years of age or older at the time of the offense.

The trial court denied the motion, reasoning that the computer was utilized in arranging a meeting because the conversation on the computer led to the telephone conversation. The trial court also ruled that the question of who did the soliciting was for the jury to answer. He further stated that witness credibility is also to be determined by the jury. Finally, the trial court ruled that there was evidence regarding Hale's age.

Hale then moved for a directed verdict arguing that the State failed to show that the alleged actions occurred in Saline County. The trial court reasoned that the case could be brought in either county under the statute and denied the motion. Hale then rested and renewed the motions on the same bases. The motions again were denied. Appellant was convicted on January 14, 2008, and sentenced to twenty-three years' imprisonment. This appeal followed.

Statement of Law

Double-jeopardy considerations require this court to review a directed-verdict argument before other points are addressed. See *Ramaker v. State*, 345 Ark. 225, 46 S.W.3d 519 (2001). We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006). This court has repeatedly held that in reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Id.* We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.*

Furthermore, circumstantial evidence may provide a basis to support a conviction, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Cluck, supra*. Whether the evidence excludes every other hypothesis is left to the jury to decide. *Id.* The credibility of witnesses is an issue for the jury and not the court. *Id.* The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id.*

Internet stalking of a child is codified at Arkansas Code Annotated section 5-27-306, which states as follows:

- (a) A person commits the offense of internet stalking of a child if the person being twenty-one (21) years of age or older knowingly uses a computer online service, internet service, or local internet bulletin board service to:
 - (1) Seduce, solicit, lure, or entice a child fifteen (15) years of age or younger in an effort to arrange a meeting with the child for the purpose of engaging in:

- (A) Sexual intercourse;
 - (B) Sexually explicit conduct; or
 - (C) Deviate sexual activity;
 - (2) Seduce, solicit, lure, or entice an individual that the person believes to be fifteen (15) years of age or younger in an effort to arrange a meeting with the individual for the purpose of engaging in:
 - (A) Sexual intercourse;
 - (B) Sexually explicit conduct; or
 - (C) Deviate sexual activity;
 - (3) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on a child fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the child for the purpose of engaging in:
 - (A) Sexual intercourse;
 - (B) Sexually explicit conduct; or
 - (C) Deviate sexual activity;
 - (4) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on an individual that the person believes to be fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the individual for the purpose of engaging in:
 - (A) Sexual intercourse;
 - (B) Sexually explicit conduct; or
 - (C) Deviate sexual activity.
- (b) Internet stalking of a child is a:
- (1) Class B felony if the person attempts to arrange a meeting with a child fifteen (15) years of age or younger, even if a meeting with the child never takes place;
 - (2) Class B felony if the person attempts to arrange a meeting with an individual that the person believes to be fifteen (15) years of age or younger, even if a meeting with the individual never takes place; or
 - (3) Class A felony if the person arranges a meeting with a child fifteen (15) years of age or younger and an actual meeting with the child takes place, even if the person fails to engage the child in:
 - (A) Sexual intercourse;
 - (B) Sexually explicit conduct; or
 - (C) Deviate sexual activity.
- (c) This section does not apply to a person or entity providing an electronic communications service to the public that is used by another person to violate this section, unless the person or entity providing an electronic communications service to the public:

- (1) Conspires with another person to violate this section; or
- (2) Knowingly aids and abets a violation of this section.

Sufficiency of Evidence

Hale contends that the evidence against him was insufficient to support his conviction. He argues that by the clear language of the statute, it is the accused that must seduce, solicit, lure, or entice the individual to meet with him for the sexual purposes set out in the statute. He contends that the transcript of the online chat with the undercover officer proves that he did not use the computer to attempt to seduce, solicit, lure, or entice anyone into a sexual encounter. He maintains that Deputy Barker is the one who tried to seduce him into a meeting by using language such as, “damn your hot,” “u looking for a hook up?” and “you can come here for a little while.” He argues that the trial court’s finding that the computer conversation led to a telephone being used, and therefore, the substance of the conversation by telephone could be considered to establish a violation, is contrary to the plain language of the statute. He contends that the statute forbids use of the internet, not the telephone, for specific purposes.

Moreover, Hale claims that even if the telephonic conversation could be considered, the police were still responsible for doing the seducing, soliciting, luring, and enticing. He emphasizes that Ballard testified that Hale did not mention anything sexual, that she was trying to be flirtatious, and that she told him she was up for anything. She stated that she brought up condoms and alcohol in the conversation. Hale contends that with regard to both the computer and telephonic conversations, the jury could not have found, without resorting to speculation and conjecture, that he was guilty of internet stalking as defined by the statute.

He maintains that even if he did have an internet chat with someone who claimed to be fourteen-years old and answered questions of a sexual nature posed by that same person, he did not violate the statute.

The State claims that substantial evidence supports the verdict. The evidence showed that Deputy Barker posed as a fourteen-year-old girl named Amber, who exchanged this information with Hale, who is thirty-three years of age. Amber explained she had skipped school because her mother was out of town, and he ultimately asked Amber to call him to arrange a rendezvous at her house. When Kristy Ballard, a sheriff's office secretary, placed the call, Hale asked her what she wanted, what kinds of things she was into, and responded affirmatively when she asked if he was talking about sexual things. They talked about alcohol, condoms, and what kind of car he would be driving. She gave him directions to her house and the conversation ended when he pulled into what he thought was her driveway. When Hale was arrested, police found an adult novelty toy, a strip of four condoms, and sexual aids.

The State maintains that there was substantial evidence from which the jury could find Hale guilty of internet stalking of a child. We agree. Hale's intention became clear when he arrived at Amber's home with condoms, sex toys, and sexual aids. Therefore, we hold that substantial evidence supports his conviction.

Jurisdiction

Appellant contends that the disposition of a criminal charge that occurs outside the territorial boundaries of the judicial district in which the charge is brought is void. *Waddle v. Sargent*, 313 Ark. 539, 855 S.W.2d 919 (1993). Further, he contends that a criminal trial must be held in the county in which the crime was committed. *Kemp v. State*, 324 Ark. 178,

919 S.W.2d 943 (1996). Appellant argues that he was located in Little Rock, Pulaski County, when he initiated the internet chat with the undercover police officer that led to his being charged with internet stalking. He contends that it is of no consequence that the police officers were located in Saline County.

The State asserts that where an offense is committed partly in one county and partly in another or the acts or effects thereof requisite to its consummation occur in two or more counties, jurisdiction lies in either county. Ark. Code Ann. § 16-88-108(c). The State contends that the evidence showed that the undercover officer who chatted with Hale while posing as a child of fifteen-years old or younger was located in Saline County, Arkansas. Thus, an element of the offense, communication with the intended victim, took place in Saline County, and jurisdiction was proper there. *See, e.g., State v. Brooks*, 360 Ark. 499, 202 S.W.3d 508 (2005) (noting that jurisdiction of internet-child-luring case filed under Arkansas Code Annotated section 5-27-603 was proper in Pulaski County where Mississippi County defendant chatted with Pulaski County undercover officer).

Accordingly, we affirm.

Affirmed.

PITTMAN and GLOVER, JJ., agree.